equitable so to do make an order validating the allotment. I fail to see the relevance of this provision in this case since no allotment has been made only a decision to allot and furthermore, the plaintiff although a shareholder, is not one of those persons referred to in that section.

After considering the circumstances of this case, and upon finding that the acts of the Directors in question are *ultra vires* the Articles of Association of the company, I propose to grant an injunction to restrain the defendants, but only for so long as the resolution of the Annual General Meeting of the Company held on 29th November, 1972 remains in force, from holding and/or conducting any Directors' meetings to approve issue convey dispose or transfer the unissued new shares of the company otherwise than to persons described in that resolution.

Costs to the plaintiff.

Order accordingly.

Solicitors: *Dulip Singh & Co.; A. K. J. D'Cruz & Co.*

EASTERN MINING & METALS CO. SDN. BHD. v. WAN ABSAH BINTI MOHAMED & ORS.

[A.C.J. (Ibrahim J.) June 25, 1974]
[Kuala Trengganu — Civil Appeal No. 1 of 1972]

Workmen's Compensation — Whether deceased's death due to accident which arose out of and in the course of employment — Workmen's Compensation Ordinance, 1952, s. 4(1)(b).

In this case the deceased was employed by the appellants as a rocker operator. He died of a heart attack after he had travelled to the work site on the day in question. The arbitrator decided that the deceased's death was due to an accident which arose out of and in the course of his employment and awarded to the respondents a sum of $7,200 as compensation. The appellants appealed.

Held, dismissing the appeal: the learned arbitrator had rightly decided that the deceased's death was due to an accident which arose out of and in the course of his employment.

Cases referred to:-

(1) *McFarlane* v. *Hutton Bros. (Stevedores) Ltd.* [1926] All E.R. Rep. 246.

(2) *James Patrick & Co. Proprietary Ltd.* v. *Sharpe* [1954] 3 All E.R. 216.

CIVIL APPEAL.

K. Thayalan for the appellants.

A. Wilson for the respondents.

Ibrahim J.: This is an appeal on a certificate under section 39(2) of the Workmen's Compensation Ordinance, 1952 (hereinafter referred to as the Ordinance) from the decision of the President Sessions Court, Dungun sitting as an arbitrator under section 30 of the Ordinance.

The facts are not in dispute. One Long bin Haji Mohamed was first employed by the appellant company in 1954 as a rocker operator. The rocker was about 35 tons in weight and was used to shift iron ore and waste to the required places. The nature of the work was 'rough & tough'. On 14 September 1969 he left his house at Sura, Dungun to go to work in Bukit Besi. His shift that day was from 4 p.m. to 12 midnight. He boarded the company train which left Sura station at about 1.30 p.m. and arrived at Bukit Besi station at about 3.15 p.m. He appeared normal and did not complain of any illness during the train journey, the distance of which was about 23 miles. From Bukit Besi station he walked along level ground to the bus station about 100 yards away and after collecting his time card at about 3.45 p.m. he boarded a bus to go to his work site which was about one mile from the bus stand. The bus journey was an uphill climb with lots of zig zag turnings. He reached his work site at about 4 p.m. and after alighting from the bus he went to the 'makan' shed which was also used as a resting place. At about 4.05 p.m. he complained that he was not feeling well and asked that he be taken to the hospital. A Land Rover took him to the company hospital where he was admitted at about 4.30 p.m. for observation and treatment of his complaint of severe chest pain. He died at about 3.10 a.m. on the following day of Myocardial Infraction (*i.e.* heart attack) which the company doctor (RW1) said was an ordinary illness. He was about 50 years old at the time of his death.

The deceased's widow and 6 children (respondents) subsequently made an application to the Pen. Pengarah Hal Ehwal Buruh, Dungun for compensation under the Ordinance. At an enquiry held by the Commissioner the parties only agreed that the deceased was a workman within the meaning of the Ordinance and that the respondents were his dependants. The disputed matters were therefore referred to the arbitrator who in the event decided that deceased's death was due to an accident which arose out of and in the course of his employment and awarded to the respondents a sum of $7,200 as compensation.

It is contended by the appellant company that the learned arbitrator had erred in law —

(1) in holding that the circumstances and evidence adduced before him amounted to an "accident" within the Ordinance

and

(2) in failing to give sufficient consideration to the facts that the cause of death of the deceased was Myocardial Infraction (*i.e.* heart attack) and that on the material day the deceased had not commenced his work.

Though the company doctor had said that the cause of death was an ordinary illness and that his old age, diabetes and blood pressure had contributed to it, he also said that the "nature of the work of the deceased as a rocker operator for the past 15 years and 6 days was the contributory cause of the hastening of his heart attack" and I therefore agree with the learned arbitrator's finding that "the deceased's death was due to an accident within the meaning and in the context of the Workmen's Compensation Ordinance, even though it was not attributable to any sudden strain having been put on the deceased on the day in question." In *McFarlane* v. *Hutton Bros. (Stevedores) Ltd.*[1] where it was held that the death could be due to an accident within the meaning of the Workmen's Compensation Act, 1925, section 1, even though it was not attributable to any sudden, unusual strain having been put on the workman Atkin L.J. at page 251 said:

"It appears to me that if it is established that a man suffers a strain of the heart which causes death as a result of the work engaged in, nobody can say that he has not sustained a physiological injury, and, therefore, has met with an accidental injury."

His Lordship continued:

"I find myself quite unable to distinguish this case from *M'Ardle* v. *Swansea Harbour Trust* (1915) 85 L.J.K.B. 733. It appears to me to be exactly the same in every detail. The only difference is that the loss or hurt here took some twenty or thirty minutes to develop, whereas in *M'Ardle's Case* the loss or hurt happened at once, according to the nature of the accident, because it was the bursting of an aneurism, and therefore death was caused immediately."

In *James Patrick & Co. Proprietary Ltd.* v. *Sharpe*[2] the respondent's husband, while travelling between his place of residence and his place of employment, suffered an auricular fibrillation as a direct result of which he died. For some years prior to his death he suffered from atherosclerosis and degenerative and progressive heart disease, but his pathological condition was not known to, or suspected by him. The onset of the auricular fibrillation was a sudden physiological change which was unexpected and not designed by him. It was held that it was not necessary to prove that some external event, or some action of the deceased, had caused the sudden physiological change to happen when it did, and, therefore, personal injury by accident was caused to the deceased within the meaning of section 5(1) reading into that sub-section the definitions of "disease" and "injury" contained in section 3(1); accordingly the appellant was liable to pay compensation.

The facts in that case are quite similar to the facts in our case, the only difference being that while the workman in that case had died while he was actually travelling in the bus, the workman in our case had died soon after he had completed his bus journey. Section 5(1)(b)(i) of the Workers' Compensation Act, 1928 (Victoria) (No. 3806 of 1928) as amended by Workers' Compensation Act, 1946 (Victoria) (No. 5128 of 1946) is almost identical with section 4(1)(b) of our Ordinance which provides that an accident happening to a workman while travelling to his place of employment shall be deemed to arise out of and in the course of his employment. If such accident could be so deemed it would in my view also follow that an accident happening soon after a workman had completed his journey could also be so deemed. This would be particularly so when the workman in our case had taken his time card and had therefore, as found by the learned arbitrator, "commenced his work for his afternoon shift."

I therefore hold that the learned arbitrator had rightly decided that deceased's death was due to an accident which arose out of and in the course of his employment and as the amount of compensation which was awarded has not been challenged I would dismiss this appeal with costs.

Appeal dismissed.

Solicitors: *Skrine & Co.; Wilson & Co.*

CHI LIUNG & SON SDN. BHD. v. CHONG FAH & SONS SDN. BHD. & ANOR.

[O.C.J. (Ajaib Singh J.) July 26, 1974]
[Kuala Lumpur — Civil Suit Nos. 1302 & 1304 of 1973]

Land Law — Caveat — Application to extend private caveat — Whether application can be made by summons in chambers in a pending suit — Burden of proof — Whether applicant has a caveatable interest — National Land Code, ss. 323(1)(a) and 326(2).

In this case the plaintiff had applied to the Registrar of Titles for private caveats to be entered against certain lands and the Registrar of Titles had entered the private caveats. The plaintiff subsequently commenced proceedings against the defendants for declarations that the memoranda of transfer of the lands executed by the second defendant in favour of the first defendant and registered in the Registry of Titles were fraudulent, null and void. This action was still pending. The first defendant applied to the Registrar of Titles for the removal of the caveat and notices of intended removal was served by the Registrar of Titles on the plaintiff. The plaintiff thereupon applied by summons in chambers for extension of the private caveats.

Held: (1) where there is an action pending before the court an application to extend an existing caveat may quite properly be made by way of summons in chambers in the pending action where the lands in question are the very subject matter of the pending action and where the claims in the action include claims of such a nature as would involve a consideration of the preservation or security of the lands until the rights of the parties concerned are finally determined by the court;

(2) the plaintiff in this case had shown good grounds for its claim to the lands in question and therefore had a caveatable interest under section 323(1)(a) of the National Land Code as a person or body claiming title to alienated land;

(3) the caveats in this case should be extended until the civil suits were heard and determined by the court.

Cases referred to:-

(1) *In re Meister Lucius & Bruning Ltd.* [1914] W.N. 390.

(2) *Nanyang Development (1966) Sdn. Bhd.* v. *How Swee Poh* [1969] 1 M.L.J. 232; [1970] 1 M.L.J. 145, F.C.

(3) *Yap Hong Thin & Anor.* v. *Seenevasam* [1970] 1 M.L.J. 143.

(4) *Heywood & Anor.* v. *B.D.C. Properties Ltd.* [1963] 2 All E.R. 1063.

CIVIL SUITS.

R. C. Hoffman for the plaintiff.

R. R. Sethu for the respondents.

Ajaib Singh J.: The plaintiff made two separate applications, which I heard together, in the above civil suits, for extensions of private caveats which the plaintiff had entered against certain lands the subject matter of the civil suits between the plaintiff and the defendants. The applications were made by way of summons-in-chambers and were supported by affidavits affirmed by one Tong Lee Hwa a director of the plaintiff company. The facts leading to these applications were that on 2nd November, 1973, the plaintiff applied to the Registrar of Titles, Selangor, for the entry of private caveats against certain lands under section 323 of the National Land Code. The grounds of claim as set out in the applications were similar, except for certain dates, as follows: —

"(a) That the said Chi Liung & Son Sendirian Berhad is the registered proprietor of all the said lands described in the schedule hereto.

(b) That on the 1st day of November 1973 we caused to have a search made at the Registry of Titles, Kuala